



TENNESSEE VALLEY AUTHORITY

BILLING CODE: 8120-08-P

18 CFR Part 1304

RIN 3316-AA23

Floating Cabins

AGENCY: Tennessee Valley Authority

ACTION: Proposed Rule

SUMMARY: The Tennessee Valley Authority (TVA) is proposing to amend its regulations that govern floating cabins located on the Tennessee River System. The mooring of floating cabins on the Tennessee River System, if left unaddressed, would pose unacceptable risks to navigation, safety, the environment, and public lands.

DATES: Written comments must be received on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

Mail/Hand Delivery: David B. Harrell, Program Manager, Floating Cabins

Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A-K, Knoxville, TN 37902

Email: dbharrell@tva.gov or fc@tva.gov

FOR FURTHER INFORMATION CONTACT: David B. Harrell, 865-632-1327, dbharrell@tva.gov.

SUPPLEMENTARY INFORMATION:

Legal Authority

These proposed amendments are promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831-831ee, Title V of the Independent Offices

Appropriations Act of 1955, 31 U.S.C. 9701, and OMB Circular No. A-25. Under Section 26a of the TVA Act, no obstructions affecting navigation, flood control, or public lands or reservations shall be constructed, operated, or maintained across, along, or in the Tennessee River System without TVA's approval. TVA has long considered nonnavigable structures such as floating cabins to be obstructions that require its approval. In addition, Section 9b of the TVA Act provides that TVA may require floating cabins to be maintained by the owner to reasonable health, safety, and environmental standards. Section 9b also authorizes TVA to levy fees on floating cabin owners as necessary and reasonable to ensure compliance.

Background and Proposed Amendments

TVA is a multi-purpose federal agency that has been charged by Congress with promoting the wise use and conservation of the resources of the Tennessee Valley region, including the Tennessee River System. In carrying out this mission, TVA operates a system of dams and reservoirs on the Tennessee River and its tributaries for the purposes of navigation, flood control, and power production. Consistent with those purposes, TVA uses the system to improve water quality and water supply and to provide a wide range of public benefits including recreation.

To promote the unified development and regulation of the Tennessee River System, Congress directed TVA to approve obstructions across, along, or in the river system under Section 26a of the TVA Act. "Obstruction" is a broad term that includes, by way of example, boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluents, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and floating cabins.

TVA also owns, as agent for the United States, much of the shoreland and inundated land along and under its reservoir system.

The proposed amendments would establish health, safety, and environmental standards for floating cabins, including standards for electrical safety, flotation, mooring, and wastewater discharge. The proposed amendments also address TVA's management and administration of the floating cabins program. The proposed amendments would allow floating cabin owners until January 1, 2021, to register with TVA. They also establish permitting requirements for floating cabins and other requirements for repairs, modifications, or alterations to floating cabins and their attached structures.

In addition, TVA also proposes to make other changes to its Section 26a regulations. Certain requirements for flotation and discharges into navigable waters that were prompted by floating cabins will apply to all Section 26a applications and permits. The proposed amendments include other minor changes to TVA's Section 26a regulations for clarity and consistency.

Since 1971, TVA has used its Section 26a authority to prohibit the mooring on the Tennessee River System of new floating cabins (formerly nonnavigable houseboats) that are designed and used primarily for habitation and not for water transportation. In particular, TVA amended its regulations in 1971 to prohibit the mooring or anchoring of new nonnavigable houseboats except for those in existence before November 21, 1971. Criteria were established then to identify when a houseboat was considered "navigable" and the conditions under which existing nonnavigable houseboats would be allowed to remain. These criteria were characteristics that TVA determined were indicative of real watercraft, *i.e.*, boats or vessels that are designed and used primarily to traverse water.

Since 1971, TVA has made minor changes to its regulations affecting nonnavigable houseboats, most notably in 1978 when TVA prohibited mooring of nonnavigable houseboats on the Tennessee River System except for those in existence on or before February 15, 1978. Effective October 1, 2018, TVA updated its regulations to change the terminology to floating cabins and prohibit new floating cabins that did not exist on the Tennessee River System on or before December 16, 2016.

Despite over 40 years of regulation related to floating cabins, the number of floating cabins on the Tennessee River System continued to increase. In determining what action to take with respect to floating cabins, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assessed the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins on the Tennessee River System. TVA released a draft of this EIS for public comment in June 2015 and held four public meetings and a webinar to provide information about its analyses and to facilitate public involvement. Public reaction to this situation widely varied.

Many members of the general public urged TVA to require the removal of all floating cabins because TVA's reservoirs are public resources and owners of floating cabins are occupying public areas. Owners of floating cabins generally supported additional reasonable regulation of their structures, but argued against policies requiring their removal because of the investments they have made in the structures. Other commenters had concerns about discharges of black (sewage) and grey (showers, sinks, etc.) water from floating cabins and shock and electrocution risks associated with the electrical connections to floating cabins. Commenting agencies consistently supported

better regulation of floating cabins. The final EIS and associated documents can be found at <https://www.tva.com/floatingcabins>.

After considering the comments it received during the EIS process and its analyses of impacts, TVA identified as its preferred policy one that establishes standards to ensure safer mooring, electrical connections, and protection of water quality. Under the preferred policy, the mooring of new floating cabins would be prohibited on the Tennessee River System. The preferred policy would have required all existing floating cabins, including nonnavigable houseboats, to be removed from the Tennessee River System by January 1, 2036, and be subject to a regulatory program in the interim. On May 5, 2016, the TVA Board of Directors adopted the preferred policy, except the Board extended the removal date to May 5, 2046.

On December 16, 2016, Congress enacted the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act). Title IV Section 5003 related to floating cabins and amended the TVA Act to include Section 9b. This new section of the TVA Act provides that TVA may approve and allow the use of floating cabins on waters under the jurisdiction of TVA as of December 16, 2016, if the floating cabin is maintained to reasonable health, safety, and environmental standards as required by the TVA Board of Directors and if the owner pays a compliance fee if assessed by TVA. The WIIN Act stipulates that TVA may not require the removal of a floating cabin that was located on the Tennessee River System as of December 16, 2016: (1) for a period of 15 years if it was granted a permit by TVA before enactment, and (2) for a period of 5 years for a floating cabin that was not granted a permit by TVA before enactment. It further

stipulates that TVA may establish regulations to prevent the construction of new floating cabins. These regulations were planned in two phases.

Phase I Floating Cabins Amendments

TVA published “Phase I” rule amendments for floating cabins that became effective on October 1, 2018. These amendments clarified the types of structures that TVA will regulate as a floating cabin and prohibited new floating cabins from mooring on the Tennessee River System after December 16, 2016. TVA estimates that approximately 2,250 floating cabins were moored on the Tennessee River System on December 16, 2016. These initial rule amendments also incorporated a requirement for owners to register their floating cabins and identified locations where floating cabins may moor.

Proposed Amendments

The proposed “Phase II” rule amendments include health, safety, environmental, and permitting standards that will apply to all floating cabins. A diverse stakeholder group composed of 18 members advised TVA on the development and drafting of these standards. The group represented varied interests and perspectives. Members included representatives from floating cabin owners, lake user interests, fishing interests, marina owners, local power distributors, state and federal regulatory agencies, the insurance industry, and the general public. The full group met five times from August 2017 to June 2019 at various locations, including locations near Norris and Fontana Reservoirs where floating cabins are prevalent. Teleconferences were also held among three subgroups to develop and discuss recommendations in specific subject matter areas. An industry professional in marine electricity presented to the group and helped answer questions

regarding electricity at marinas and in water. TVA tested and displayed ground fault protection devices for the group to observe and discuss.

Each of the three subgroups made recommendations for a subset of standards. Recommendations were presented to the full stakeholder group for wastewater, electrical, flotation, mooring, fees, permitting standards, and compliance. TVA reviewed and evaluated the recommendations and responded to each recommendation. TVA refined the recommendations and developed them into these proposed rule amendments for publication for public review and comment. A draft of the rule amendments was reviewed with the stakeholder group in June 2019.

Permitting Program

TVA's proposed standards and permitting requirements for floating cabins will apply to all existing floating cabins, including those formerly referred to as nonnavigable houseboats originally permitted on or before February 15, 1978. All floating cabins and attached structures will require a new permit.

To obtain a permit, owners of floating cabins will have until January 1, 2024, to comply with the standards in TVA's regulations and submit a complete permit application that certifies compliance and includes the payment of a Section 26a permit application fee. TVA will not require floating cabin owners to pay the permit application fee if they possess a permit issued before December 16, 2016, in their name and the structure is compliant with the terms of the permit, constructed in accordance with the permit (same dimensions, attached structures such as docks, and utility connections), and moored at the permitted location. A change in ownership application fee, currently \$250, will be charged each time an existing floating cabin owner requests a transfer of the

permit to a new owner. Permits will only be transferrable if the structure is fully in compliance with the existing permit.

The proposed permit application submission date of January 1, 2024, will give owners approximately four years from the publication of the standards to bring structures into compliance. TVA encourages floating cabin owners to bring floating cabins into compliance and then apply for a permit without delay. Upon submission of the application, owners of floating cabins may remain in place until TVA acts on the application. If TVA approves the application, TVA will issue a Section 26a permit to the owner. If TVA denies the application, the owner must either correct all deficiencies or remove the structure in accordance with Section 9b of the TVA Act and 18 CFR 1304.406.

Removal

Under the proposed amendments, TVA would require owners to remove their floating cabins if TVA determines a floating cabin is not in compliance with its permit, does not apply for a permit by January 1, 2024, or does not pay the compliance fee if levied by TVA. The requirement to remove a floating cabin would be in accordance with Section 9b of the TVA Act and 18 CFR 1304.406. All structures not removed by the applicable deadline may be removed by TVA at the owner's expense.

Flotation

Unencased flotation (i.e. Styrofoam) breaks apart over time, can harm wildlife, and becomes litter in reservoirs or along shorelines. Currently, all docks, floating cabins, and other water-use structures and facilities permitted by TVA are subject to 18 CFR 1304.400, which establishes flotation requirements to protect the environment from

harmful flotation materials such as Styrofoam and the contents of metal drums, which were common flotation devices in the past. TVA's current regulations prohibit unencased flotation unless it was previously allowed by TVA, was installed prior to September 8, 2003, and is still serviceable in TVA's judgment. Although TVA interprets this provision to prohibit the installation of unencased flotation to repair or replace existing flotation, the proposed amendments would make this prohibition explicit and would require the removal and replacement of all unencased flotation no later than December 31, 2031. If TVA determines that the existing unencased flotation is no longer serviceable prior to December 31, 2031, owners would have 24 months from notification from TVA to remove and replace it. These changes would apply to all Section 26a permits, including floating cabins.

Mooring

Some floating cabins are moored by running cables across the water to attach to a tree or other anchor on the shoreline. This potentially obstructs navigation and recreation, poses a potential hazard to public safety, and can detract from the scenic integrity of the areas where floating cabins are located. Current regulations require floating cabins to be moored in such a manner as to: (1) avoid obstruction of or interference with navigation, flood control, public lands, or reservations; (2) avoid adverse effects on public lands or reservations; (3) prevent the preemption of public waters when moored in permanent locations outside of the approved harbor limits of commercial marinas; (4) protect land and land rights owned by the U.S. alongside and subjacent to TVA reservoirs from trespass and other unlawful and unreasonable uses; and (5) maintain, protect, and enhance the quality of the human environment.

These regulations will continue to apply to floating cabins. Two additional requirements will be added. Floating cabin owners must ensure visibility of all mooring cables, and comply with 18 CFR 1304.205(c) which prohibits attachment to trees on TVA property. The method of mooring should be modified, if necessary, to eliminate navigation and safety hazards. If modification of the mooring method is not practical or feasible, TVA's permit will require the hazard to be marked to aid in visibility and to help avoid property damage and personal injury. Permit applicants must indicate how the structure is moored, and TVA will determine if that method is allowable. Any determinations on proper mooring and hazard marking will be made during the permit review process. TVA may require owners to install markers on aerial wires or buoys on underwater cables at specific distances to help increase visibility and warn the public. TVA's current regulations specify four locations where floating cabins must be located. These include areas where the floating cabin was moored as of December 16, 2016, and the owner has sufficient land ownership or landrights as specified in the regulations; locations where the owner had written permission from TVA prior to December 16, 2016; or within the harbor limits of a commercial marina. To prevent sprawl and to better contain the impacts of floating cabins, TVA would prohibit relocation of permitted floating cabins to a different reservoir. TVA would consider applications to relocate existing floating cabins to any commercial marina on their respective reservoir that is willing to accept them. Any relocation except within the harbor limits of the same marina would require advance approval from TVA in the form of a reissued permit and concurrence from the receiving marina operator.

Electrical

Floating cabins can also pose a threat to public safety due to unsafe electrical systems. TVA is aware that floating cabins are currently obtaining electricity from the shore via underwater cables, through onboard portable generators, and by other methods. TVA is not aware of any local, state, or federal entity that currently monitors the construction of floating cabins and enforces building codes. However, after the WIIN Act, these agencies may consider floating cabins to be more like housing rather than boats, and agencies may determine to regulate and inspect those within their jurisdiction. If an agency chooses to regulate, floating cabins would be required to comply with all applicable federal, state, and local laws and regulations regarding electrical wiring and equipment. If a floating cabin is documented to be in violation of any federal, state, or local electrical standard or regulation by the respective regulatory agency, TVA will revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements.

In addition and at a minimum, TVA would require all floating cabin owners to install ground fault protection and to use properly listed underwater cables. At two-year intervals, TVA will require floating cabin owners to provide certification that the floating cabin meets these requirements.

Wastewater

Floating cabins use various methods to manage their black and grey water. Some have holding tanks for black water (sewage) and use pump-out facilities to dispose of wastewater through land-based systems. TVA has received complaints of some floating

cabins discharging black and/or grey water directly to the reservoir. Grey water originates from sinks, showers, dishwashers, and washing machines and is often discharged directly to the reservoir. Black and grey water discharges can contribute to water quality deterioration. Discharges are regulated by state environmental agencies.

TVA would require floating cabin owners to comply with discharge requirements set by local, state, or federal agencies and would rely on those agencies to identify when such requirements are violated. This properly recognizes those agencies' expertise and regulatory roles. If TVA is notified by a federal, state, or local agency that an owner of a floating cabin is not compliant with applicable discharge requirements and has failed to correct that deficiency, TVA would revoke the floating cabin's permit and require the structure to be removed from the Tennessee River System. The potential loss of the Section 26a permit for floating cabins if discharge violations occur should help induce more compliant behavior and complement state agency efforts.

TVA will require a Section 26a permit for all floating cabins, and all TVA permits must comply with the Clean Water Act (CWA). Section 401 of the CWA prohibits federal agencies from issuing a permit to conduct an activity, including the construction or operation of facilities, which may result in any discharge into navigable waters of the United States unless the applicable state agency has certified that the proposed activity will be conducted in a manner that will not violate applicable water quality standards or the certification has been waived. Each certifying agency responsible for implementing the CWA will determine if certifications are required for existing, rebuilt, altered, or combined floating cabins. Some may determine to review and make one determination that applies to all floating cabins within its jurisdiction or some may

review each request for floating cabin permits individually. The respective certifying agencies will make this determination.

When Section 401 of the CWA is triggered, TVA will not grant a Section 26a permit for a floating cabin or other obstruction unless a water quality certification has been provided or waived by the respective certifying agency. The proposed rule allows up to one year for the certifying agency to take action. If a certifying agency has not acted within that period of time, TVA will deem the certification requirement to be waived and may then proceed with processing the Section 26a application. This would apply to all Section 26a permit applications.

Maintenance, Alterations, and Rebuilds

Floating cabins that fall into disrepair can threaten public safety, create a boating hazard, and create litter in reservoirs and along shorelines. Therefore, normal repair and maintenance of floating cabins is encouraged and may be undertaken without TVA's permission. By way of example, maintenance activities include painting, changing the internal walls of the enclosed space, replacing shingles or siding, electrical wiring, plumbing, or adding new encased flotation that complies with the regulations.

Maintenance activities do not include any activity that would increase the size or dimensions of the floating cabin, including its enclosed or open spaces. Owners should not increase the size (length, width, or height) of the floating cabin or the enclosed or open spaces without TVA's permission and prior written approval.

Any alteration to the approved plans for a floating cabin would be deemed a structural modification and, if approvable, would require a new permit from TVA. With three exceptions, alterations will be prohibited. First, an alteration may be allowed if it is

approved in writing in advance by TVA and is necessary to comply with health, safety, and environmental standards. Second, TVA may approve enclosure of open space on the monolithic frame of an existing floating cabin if the enclosure will not result in expansion to the dimensions (length, width, and height) of the monolithic frame. At least 24 contiguous square feet of open space with a minimum width of four feet must be retained on the monolithic frame for boarding. Finally, TVA may allow changes in the roof pitch but no part of the floating cabin may exceed a total height of 14 feet above the lowest floor level of the floating cabin.

Floating cabins may be rebuilt to the exact same dimensions (length, width, and height), including both enclosed and open spaces, as previously approved by TVA. Owners will be required to notify TVA in writing and submit plans 60 days in advance of proposed rebuilding and must receive prior written approval from TVA before beginning construction. TVA may require a new permit for the proposed rebuilding if it includes any changes to the previously approved plans. Owners must submit to TVA four photographs of the rebuilt floating cabin, one from each side, within 30 days of completion.

Combined Floating Cabins

To potentially reduce the number and footprint of floating cabins on the Tennessee River System, TVA is proposing a program that allows removal of two or more existing floating cabins in exchange for one replacement floating cabin. With a permit obtained in advance, TVA may allow owners to remove and replace multiple existing floating cabins with a combined floating cabin that meets certain size requirements. Owners must provide evidence that all existing floating cabins to be

removed existed on the Tennessee River System as of December 16, 2016, and must remove the existing floating cabins before construction on the combined floating cabin may begin. The permits for the removed floating cabins will be rendered invalid upon their removal. All combined floating cabins must locate within the harbor limits of a commercial marina and have the marina owner's permission. The combined floating cabin must be located on the same reservoir as any of the existing floating cabins to be exchanged. The maximum size allowable for the new structure would be the lesser of 1000 square feet or the combined size of the monolithic frames of the removed floating cabins. Any amount of the combined size exceeding 1000 square feet would be forfeited and could not be transferred to another party or another project. At least 24 contiguous square feet with a minimum width of four feet must remain open to allow for boarding of the combined floating cabin. The maximum roof height is 14 feet above the lowest floor level. Attached structures such as decks may not be incorporated into the monolithic frame of the combined floating cabin. Requests for combined floating cabins will be deemed major construction and subject to the applicable Section 26a permit application fee.

Attached Structures

Floating cabins will be limited to 250 square feet of attached structures such as decks or swim platforms. Attached structures must remain open and uncovered. All attached structures must be permitted to the floating cabin owner. Attached structures that were a part of the floating cabin as of December 16, 2016, may remain with written approval from TVA. However, any application for certain structural modifications or a

combined floating cabin will require the attached structures be reduced to 250 square feet.

Other Changes to Section 26a Regulations

In addition to the changes affecting floating cabins and those for flotation and discharges applicable to all Section 26a permits, TVA is proposing other minor amendments to the Section 26a regulations. These include changes to the TVA locations where applications are addressed, clarification regarding the size of residential water-use facilities in pre-existing developments, and other minor edits for clarity and consistency in the regulations.

III. Administrative Requirements

A. Unfunded Mandates Reform Act and various Executive Orders including E.O. 12866, Regulatory Planning and Review; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13045, Protection of Children from Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, and Use; E.O. 12988, Civil Justice Reform Act; and E.O. 13771, Reducing Regulation and Controlling Regulatory Costs

This proposal contains no federal mandates for state, local, or tribal government or for the private sector. TVA has determined it will not have a significant annual effect of \$100 million or more or result in expenditures of \$100 million in any one year by state, local, or tribal governments or by the private sector. The proposal will not have a substantial direct effect on the States or Indian tribes, on the relationship between the

Federal Government and the States or Indian tribes, or on the distribution of power and responsibilities between the Federal Government and States or Indian tribes. Nor will the proposal have concerns for environmental health or safety risks that may disproportionately affect children, have significant effect on the supply, distribution, or use of energy, or disproportionately impact low-income or minority populations. Unified development and regulation of the Tennessee River System through an approval process for obstructions across, along, or in the river system and management of United States-owned land entrusted to TVA are federal functions for which TVA is responsible under the TVA Act, as amended. In general, this proposal updates TVA's regulations relating to the standards that floating cabins will be required to meet in order to remain on the Tennessee River System. This proposal would establish a charge for individuals or entities that request certain services from TVA relating to use of its property, reservoirs, and permitting for a floating cabin. Absent a request for these services for a Section 26a permit, no entity or individual would be forced to pay a charge. None of the charges would be applied retroactively. The proposal also amends TVA's regulations to clarify a date certain by which all unencased flotation must be removed from TVA's reservoirs. The proposal also amends TVA's regulations to establish a time period after which TVA will deem a state's water quality certification decision to be waived and proceed with processing of Section 26a permit applications. TVA will continue to appropriately review specific requests in accordance with applicable laws, regulations, and Executive Orders. Accordingly, the proposal has no implications for any of the referenced authorities, including the Presidential Executive Order on Reducing Regulation and Controlling

Regulatory Costs dated January 30, 2017, which affects only “significant regulatory actions” as defined by Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605, TVA is required to prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities. TVA’s Chief Executive Officer has certified that this proposal will not have a significant economic impact on a substantial number of small entities. The statute defines “small entity” as a “small business,” “small organization” (further defined as a “not-for-profit enterprise”), or a “small governmental jurisdiction.” Most floating cabins are owned by individuals and not businesses, not-for-profit enterprises, or small governmental jurisdictions, and therefore relatively few “small entities” will be affected by TVA’s proposal. Even if the proposed amendments tangentially impact marinas that accommodate floating cabins, a relatively small number of marinas will be impacted. Accordingly, this rule will not have a significant impact on a substantial number of small entities; no regulatory flexibility analysis is required; and TVA’s Chief Executive Officer has made the requisite certification.

List of Subjects

18 CFR Part 1304

Administrative practice and procedure, Natural resources, Navigation (water), Rivers, Water pollution control.

For the reasons set out in the preamble, the Tennessee Valley Authority proposes to amend 18 CFR Part 1304 as follows:

**PART 1304—APPROVAL OF CONSTRUCTION IN THE TENNESSEE RIVER
SYSTEM AND REGULATION OF STRUCTURES AND OTHER
ALTERATIONS**

1. The authority citation for 18 CFR Part 1304 continues to read as follows:

Authority: 16 U.S.C 831-831ee.

2. Amend § 1304.2 by:

- a. Adding a sentence after the second sentence of paragraph (a);
- b. Revising paragraph (b);
- c. Revising the first sentence of paragraph (c)(1) introductory text;
- d. Revising paragraph (c)(1)(i);
- e. Revising the second sentence of paragraph (c)(2) introductory text;
- f. Revising the first sentence of paragraph (c)(2)(i);
- g. Revising paragraph (c)(2)(ii)(A); and
- h. Adding three sentences after the first sentence of paragraph (d).

The additions and revisions read as follows:

§1304.2 Application

(a) * * * If the facility is an existing floating cabin, it must meet the requirements of subpart B. * * *

(b) Applications shall be addressed to the Tennessee Valley Authority, at the appropriate Regional Watershed Office location as listed on the application and on TVA's website. To contact an office, call 1-800-882-5263 or email plic@tva.gov. Applications are available on TVA's website.

(c) * * *

(1) * * * By way of example only, minor facilities may include: boat docks, piers, rafts, boathouses, fences, steps, gazebos, and floating cabins. * * *

(i) *Completed application form.* One copy of the application shall be prepared and submitted. Application forms are available on TVA's website. The application shall include a project description which indicates what is to be built, removed, or modified, and the sequence of the work. Applications for floating cabins shall include written evidence that the floating cabin was located or moored on the Tennessee River System as of December 16, 2016. An application to relocate a floating cabin to a marina shall include evidence of approval from the marina operator.

* * * * *

(2) * * * By way of example only, major projects and facilities may include: marinas, community docks, barge terminals, utility crossings, bridges, culverts, roads, wastewater discharges, water intakes, dredging, placement of fill, and combined floating cabins. * * *

(i) * * * Application forms are available on TVA's website. * * *

(ii) * * *

(A) Be prepared electronically or on paper suitable for reproduction (no larger than 11 by 17 inches).

(d) * * * No section 26a permit will be granted until required certification has been obtained or has been waived. If a certifying agency has not acted within one (1) year of an applicant's request for certification from the respective agency, TVA will deem the certification requirement to be waived and proceed with processing of the section 26a permit application. * * *

3. Amend § 1304.10 by adding paragraph (c) to read as follows:

§ 1304.10 Change in ownership of approved facilities or activities

* * * * *

(c) Change in ownership of a floating cabin is addressed in § 1304.102.

4. Amend § 1304.100 by revising the last sentence and adding two sentences thereafter to read as follows:

§ 1304.100 Scope and intent

* * * Existing floating cabins may remain moored on the Tennessee River System provided they remain in compliance with the rules in this part and obtain a permit from TVA issued after [DATE OF FINAL RULE]. All permits for nonnavigable houseboats or floating cabins that were not located on the Tennessee River System as of December 16, 2016, are terminated. Unless otherwise noted, the term floating cabin refers to the primary structure on the monolithic frame as well as all attached structures.

5. Amend § 1304.101 by:

- a. Revising paragraphs (b), (c), (d), (e), and (g); and
- b. Adding paragraphs (h), (i), (j), and (k);

The additions and revisions read as follows:

§ 1304.101 Floating cabins

* * * * *

(b) Owners of floating cabins are required to register the floating cabin with TVA before January 1, 2021. Floating cabin owners must submit certain required information with their registration. Registration shall include the following information: Clear and current photographs of the structure; a drawing or drawings showing in reasonable detail

the size and shape of the floating cabin (length, width, and height) and attached structures, such as decks or slips (length, width, and height); and a completed and signed TVA registration form. The completed TVA registration form shall include the mailing and contact information of the owner(s); the TVA permit or TVA-issued numbers (when applicable); the mooring location of the floating cabin; how the floating cabin is moored; how electrical service is provided; how waste water and sewage is managed; and an owner's signature.

(c) All floating cabins shall comply with the standards in §1304.103 and make application for a section 26a permit by January 1, 2024.

(d) Existing floating cabins may remain on the Tennessee River System provided they stay in compliance with the rules contained in this part and pay any necessary and reasonable fees levied by TVA to ensure compliance with TVA's regulations, in accordance with section 9b of the TVA Act.

(e) Existing floating cabins must be moored at one of the following locations:

(1) To the bank of the reservoir at locations where the owner of the floating cabin is the owner or lessee (or the licensee of such owner or lessee) of the proposed mooring location provided the floating cabin was moored at such location prior to December 16, 2016;

(2) At locations described by § 1304.201(a)(1), (2), and (3) provided the floating cabin was moored at such location prior to December 16, 2016;

(3) To the bank of the reservoir at locations where the owner of the floating cabin obtained written approval from TVA pursuant to subpart A of this part authorizing mooring at such location on or before December 16, 2016; or

(4) Within the designated and approved harbor limits of a commercial marina that complies with § 1304.404. As provided in § 1304.404, TVA may adjust harbor limits and require relocation of an existing floating cabin within the harbor limits.

* * * * *

(g) A floating cabin moored at a location approved pursuant to this subpart shall not be relocated and moored at a different location without a permit from TVA, except for movement to a new location within the designated harbor limits of the same commercial marina. Existing floating cabins may only relocate to the harbor limits of a commercial marina that complies with § 1304.404 on the same reservoir where the floating cabin was moored as of December 16, 2016. Relocation of a floating cabin to another TVA reservoir is prohibited.

(h) (1) Existing floating cabins shall be maintained in a good state of repair and may be maintained without additional approval from TVA. By way of example, these activities may include painting, changing the internal walls within the existing enclosed space, replacing the shingles, siding, electrical wiring, or plumbing, or adding new flotation in compliance with § 1304.400. Repair and maintenance activities shall not modify any external walls or the dimensions (length, width, and height) of the floating cabin or the enclosed or open space.

(2) Any alterations to the dimensions or approved plans for an existing floating cabin shall be deemed a structural modification and shall require prior written approval from TVA. All expansions in length, width, or height are prohibited, except under the following circumstances if approved in writing in advance by TVA:

(i) TVA may allow alterations necessary to comply with health, safety, and environmental standards;

(ii) TVA may allow enclosure of existing open space on the monolithic frame of the existing floating cabin if the enclosure will not result in expansion to the dimensions (length, width, and height) of the monolithic frame. At least 24 contiguous square feet of open space with a minimum width of four feet shall be maintained on the monolithic frame for boarding; or

(iii) TVA may allow changes in roof pitch but no part of the floating cabin may exceed a total height of 14 feet above the lowest floor level.

(3) Owners must notify TVA in writing and submit plans 60 days in advance of proposed rebuilding of a floating cabin. The owner shall not begin construction until prior written approval from TVA is received. TVA may require a new permit for the proposed rebuilding. The rebuilt floating cabin shall match the exact configuration and dimensions (length, width, and height) of both the total floating cabin and the enclosed and open space as approved by TVA. Owners shall submit to TVA four photographs of the rebuilt floating cabin, one from each side, within 30 days of completion.

(i) TVA may allow the exchange of multiple existing floating cabins removed from the Tennessee River System for a single combined floating cabin under the following conditions:

(1) Prior written approval from TVA shall be obtained before taking any actions. This request shall be regarded as an application for a major facility under § 1304.2. Evidence shall be provided to TVA that all existing floating cabins to be exchanged were located on the Tennessee River System as of December 16, 2016.

(2) Plans for removal of the existing floating cabin(s) shall be approved in writing by TVA before removal occurs, and the floating cabin(s) shall be removed at the owner's expense before construction of the new combined floating cabin may begin. Approvals of the existing floating cabins to be exchanged will be terminated.

(3) The combined floating cabin shall be moored within the harbor limits of a commercial marina that complies with § 1304.404. The owner shall provide evidence of approval from the marina operator to locate within the marina. The combined floating cabin must be located on the same reservoir as any of the existing floating cabins to be exchanged.

(4) The maximum total size of the monolithic frame of the combined floating cabin is 1000 square feet or the sum of the square footage of the monolithic frames of the existing exchanged floating cabins, whichever is less. At least 24 contiguous square feet with a minimum width of four feet must remain open to allow for boarding of the combined floating cabin. Any square footage of the existing exchanged floating cabins that exceeds the maximum allowable total size of a combined floating cabin is not transferrable to other projects or owners.

(5) The maximum roof height is 14 feet above the lowest floor level.

(6) Attached structures such as decks or swim platforms may not be covered or enclosed or incorporated into the monolithic frame of a combined floating cabin.

(j) Floating cabins are limited to 250 square feet of open, uncovered attached structures. All attached structures must be permitted to the floating cabin owner. Attached structures that were a part of the floating cabin as of December 16, 2016, may remain with written approval from TVA, but any application for a structural modification

as described in § 1304.101(h)(2) or a combined floating cabin as described in § 1304.101(i) will require the attached structures be reduced to 250 square feet.

(k) Any floating cabin not in compliance with this part is subject to the applicable removal provisions of § 1304.406 and section 9b of the TVA Act.

6. Revise § 1304.102 to read as follows:

§ 1304.102 Numbering of floating cabins and change in ownership

(a) All approved floating cabins and attached structures shall display a number assigned by TVA. The owner of the floating cabin shall paint or attach a facsimile of the number on a readily visible part of the outside of the facilities in letters at least three inches high. If TVA provided a placard or tag, it must be displayed on a readily visible part of the outside of the floating cabin.

(b) When there is a change in ownership of the floating cabin, the new owner shall notify TVA within 60 days. Upon application to TVA by the new owner, the new owner may continue to use the existing floating cabin or carry out permitted activities pending TVA's decision on reissuance of the permit. TVA shall reissue the permit upon determining the floating cabin is in good repair, is the same configuration and dimensions (length, width, and height) of both the total structure and the enclosed and open space as previously permitted, moored in the same location or in the harbor limits of the same commercial marina, and complies with the conditions of the previous approval and the requirements of this subpart.

7. Add section § 1304.103 to read as follows:

§ 1304.103 Health, safety, and environmental standards

(a) *Wastewater.* Floating cabins shall comply with § 1304.2(d) with regard to discharges into navigable waters of the United States. All discharges, sewage, and wastewater, and the pumping, collection, storage, transport, and treatment of sewage and wastewater shall be managed in accordance with all applicable federal, state, and local laws and regulations. If a floating cabin is documented to be in violation of any federal, state, or local discharge or water quality regulation by the respective regulatory agency, TVA will revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements.

(b) *Flotation.* Floating cabins shall comply with the requirements for flotation devices and material contained in § 1304.400.

(c) *Mooring.* All floating cabins must be moored in such a manner as to:

- (1) Avoid obstruction of or interference with navigation, flood control, public lands, or reservations;
- (2) Avoid adverse effects on public lands or reservations;
- (3) Prevent the preemption of public waters when moored in permanent locations outside of the approved harbor limits of commercial marinas;
- (4) Protect land and landrights owned by the United States alongside and subjacent to TVA reservoirs from trespass and other unlawful and unreasonable uses;
- (5) Maintain, protect, and enhance the quality of the human environment;
- (6) Ensure visibility of all mooring cables; and
- (7) Comply with §1304.205(c).

(d) *Electrical standards.* Floating cabins shall comply with all applicable federal, state, and local laws and regulations regarding electrical wiring and equipment. If a floating cabin is documented to be in violation of any federal, state, or local electrical standard or regulation by the respective regulatory agency, TVA will revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements. Floating cabin owners shall provide certification of compliance with the electrical standards of this subpart to TVA by January 1, 2024, and every two years thereafter. The certification must be signed by a licensed electrical engineer, a state-certified electrical inspector, or a person certified by the International Association of Electrical Inspectors, the International Code Council, or an equivalent organization.

(1) All floating cabins must meet the following minimum requirements for ground fault protection:

(i) The feeder(s) from electrical service on the shore to the floating cabin shall have ground fault protection not exceeding 100 milliamps.

(ii) If the floating cabin has a transformer, the transformer shall have ground fault protection not exceeding 100 milliamps at the first overcurrent protection device on the secondary side of the transformer. The conductors from the transformer enclosure to the overcurrent protection device shall not exceed 10 feet and shall be installed in a raceway.

(iii) If the floating cabin is located in a marina and the feeder supplying the floating cabin is part of the marina's electrical system, the feeder shall have ground fault protection not exceeding 100 milliamps.

(iv) If another source of electrical power is utilized on a floating cabin, such as but not limited to a generator, photovoltaic cell, or wind turbine, the source of electrical power shall have ground fault protection not exceeding 100 milliamps at the first overcurrent protection device for each source. For permanently installed sources, the conductors from the source to the first overcurrent protection device shall not exceed 10 feet and shall be installed in a raceway.

(v) The floating cabin owner may determine the devices that are utilized to achieve the ground fault protection requirement provided such devices are labeled and listed from a third-party testing laboratory for the purpose of the installation.

(2) A portable power cable shall be installed from the shore to the floating cabin and shall, at a minimum, meet the requirements of National Fire Protection Association 70 Article 555.13 (A)(2) and (B)(4) of the 2017 National Electrical Code. For new portable power cables installed after < the effective date of these regulations>, the cables shall meet the requirements of the most recent version of the National Electric Code.

8. Amend § 1304.204 by revising paragraphs (a) and (i) to read as follows:

§ 1304.204 Docks, piers, and boathouses

* * * * *

(a) Docks, piers, boathouses, and all other residential water-use facilities shall not exceed a total footprint area of 1,000 square feet, unless the proposed water-use facility will be located in an area of preexisting development. For the purpose of this regulation, “preexisting development” means either: The water-use facility will be located in a subdivision recorded before November 1, 1999, and TVA permitted at least one water-use facility in the subdivision prior to November 1, 1999; or if there is no subdivision,

where the water-use facility will be located within a quarter-mile radius of another water-use facility that TVA permitted prior to November 1, 1999. Water-use facilities located in an area of preexisting development shall not exceed a total footprint area of 1,800 square feet.

* * * * *

(i) Where the applicant owns or controls less than 50 feet of property adjoining TVA shoreland, the overall width of the facilities permitted along the shore shall be limited to ensure sufficient space to accommodate other property owners.

* * * * *

9. Amend § 1304.212 by revising paragraph (a)(1) to read as follows:

§ 1304.212 Waivers

(a) * * *

(1) The property is within a preexisting development as defined in §1304.204(a);
and

* * * * *

10. Amend § 1304.302 by revising the first sentence to read as follows:

§ 1304.302 Vegetation management on flowage easement shoreland

Removal, modification, or establishment of vegetation on privately-owned shoreland subject to a TVA flowage easement generally does not require approval by TVA. * * *

11. Revise § 1304.400(a) to read as follows.

§ 1304.400 Flotation devices and material, all floating structures

(a)(1) By December 31, 2031, all unencased (i.e. Styrofoam) flotation shall have been removed and replaced with flotation consistent with this subpart. Structures continuing to use unencased flotation on or after December 31, 2031, will be subject to removal under § 1304.406. Use or re-use of unencased flotation for repairs, replacement, or new construction is prohibited. Existing unencased flotation (secured in place prior to September 8, 2003) may continue to be used until December 31, 2031, so long as it remains attached and in good condition in TVA's judgement. If in TVA's judgement, the flotation is no longer serviceable, it shall be replaced with approved flotation within 24 months upon notification from TVA.

(2) All flotation for docks, boat mooring buoys, floating cabins and attached structures, and other water-use structures and facilities, shall be of materials commercially manufactured for marine use. Flotation materials shall be fabricated so as not to become water-logged, crack, peel, fragment, or be subject to loss of beads. Flotation materials shall be resistant to puncture, penetration, damage by animals, and fire. Any flotation within 40 feet of a line carrying fuel shall be 100 percent impervious to water and fuel. Use of plastic, metal, or other previously used drums or containers for encasement or flotation purposes is prohibited, except as provided in paragraph (c) of this section for certain metal drums already in use. For any flotation devices or material, repair or replacement is required when it no longer performs its designated function or it exhibits any of the conditions prohibited by this subpart.

* * * * *

12. Amend § 1304.412 by:

a. Adding in alphabetical order definitions for “Attached structure”, “Combined floating cabin”, “Floating cabin”, “Monolithic frame”, and “Structural Modification”; and

b. Revising the definitions for “Backlot”, “Community outlot”, and “Rebuilding”.

The additions and revisions read as follows:

§ 1304.412 Definitions

* * * * *

Attached structure means a floating deck, walkway, platform, slip, or other structure that supports the use of a floating cabin and can be detached from the floating cabin. Attached structures are not considered part of the monolithic frame of a floating cabin.

* * * * *

Backlot means a residential lot not located adjacent to the shoreland but located in a subdivision associated with the shoreland.

* * * * *

Combined floating cabin means a single floating cabin that replaces two or more existing floating cabins.

* * * * *

Community outlot means a subdivision lot located adjacent to the shoreland and designated by deed, subdivision covenant, or recorded plat as available for use by designated property owners within the subdivision.

* * * * *

Floating cabin means a nonnavigable houseboat approved by TVA on or before December 16, 2016, and other floating structures moored on the Tennessee River System

as of this date, and determined by TVA in its sole discretion to be designed and used primarily for human habitation or occupation and not designed and used primarily for navigation or transportation on the water.

* * * * *

Monolithic frame means the supporting floor structure of a floating cabin that is constructed as one rigid component. It specifically excludes any attached structures such as decks and platforms, regardless of when they were connected or how they are connected (e.g. pins, hinges, bolts, ropes, etc.).

* * * * *

Rebuilding means replacement of all or a significant portion of an approved obstruction to the same configuration, total footprint, and dimensions (length, width, and height of the obstruction or enclosed or open space) as the approved plans, standards, and conditions of the section 26a permit.

* * * * *

Structural modification means any alteration to the dimensions (length, width, and height of the obstruction or enclosed or open space) or approved plans of a structure; in the case of floating cabins, the dimensions include the total dimensions of the floating cabin or enclosed or open space.

* * * * *

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